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OFFICE OF PETITIONS

In re Application of Malandro et al. :
Application No. 10/540,903 : Decision on Petition
Filing Date: January 20, 2006 :
Attorney Docket No. PP23369.0003 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 17, 2009, to revive the above-identified application.

The petition is **granted**.

The Office mailed a Notice to Comply on April 9, 2008. The Notice set an extendable time period of one (1) month or thirty (30) days (whichever is later). An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on May 10, 2008. A Notice of Abandonment was mailed December 24, 2008.

The instant petition requests revival of the application.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the reply required to the outstanding Office action or notice, unless previously filed,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Petitioner has submitted a reply to the outstanding Notice to Comply. Petitioner has submitted the required petition fee. Petitioner has stated the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

The petition is signed by David Gay. Attorney Gay was not an attorney of record at the time the application became abandoned and is not currently an attorney of record. Therefore, it appears Attorney Gay may not have been in a position to have firsthand or direct knowledge of the facts and circumstances of the delay. Nevertheless, the statement by Attorney Gay that the entire delay was unintentional is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.¹ In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that a portion of the delay from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was intentional, petitioner must notify the Office.

The petition states, "Please recognize our Customer No. 83729 as our correspondence address." Since the petition is signed by Attorney Gay, and Attorney Gay is not an attorney of record, the Office will not change the correspondence address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Petitioner submitted \$2,350 for a five-month extension of time. However, payment for an extension of time is unnecessary when reviving an application. Therefore, \$2,350 has been credited back to Deposit Account No. 502624.

Technology Center Art Unit 1637 will be informed of the instant decision and the application, including the papers filed March 17, 2009, will be further examined in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
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Office of Petitions

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¹ See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).